

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USM ASSET TRUST SERIES - 7,

Plaintiff,

-against-

COLONY INSURANCE COMPANY,
EMPIRE HD, INC.,

Defendants.

Civil Action No.: 20-CV-_____

Removed from:

The Supreme Court of the State of New
York, County of New York Index No.:
657744/2019

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES FOR THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

Defendant, COLONY INSURANCE COMPANY (“Colony”), by and through its undersigned counsel, STEWART SMITH, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby respectfully submits this Notice of Removal of this civil action from the Supreme Court of New York, County of New York, to the United States District Court for the Southern District of New York. Colony, in accordance with the Rules of the United States District Courts and the rules of the Supreme Court of the State of New York, and in support of its Notice of Removal, states as follows:

FACTUAL BACKGROUND

1. Plaintiff, USM Asset Trust Series–7 (“USM”), commenced a civil action against Colony in the Supreme Court of New York, New York County captioned “*USM Asset Trust Series – 7 v. Colony Ins, Co.,*” bearing Index Number 657744/2019. A copy of the Summons and Complaint filed in the Supreme Court of the State of New York, County of New York is attached hereto as Exhibit “A.”

2. In the Complaint, plaintiff asserts causes of action for contractual liability and additional insured coverage. Although those claims are styled as declaratory judgment claims, they seek contractual damages.

3. Specifically, the Complaint alleges that Colony has improperly refused to provide plaintiff with a defense and indemnification with respect to an underlying lawsuit captioned *Bolivar Carchi Ordonez v. USM and Empire HD* filed in the Supreme Court of New York, New York County, Index No. 152146/2019 (the “Underlying Lawsuit”).

4. Plaintiff filed their action on or about December 30, 2019. (Compl. At pg. 1).

5. Plaintiff served a copy of the Summons and Complaint on Colony on or after January 10, 2020.

DIVERSITY JURISDICTION

6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332. There is diversity of citizenship between plaintiff and Colony. Defendant, Empire HD, Inc. is identified as a nominal party, and therefore, not considered for purposes of diversity of citizenship. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

Diversity of Citizenship

7. Plaintiff USM is a business corporation organized and existing under the laws of the State of New York, with its principal place of business at 140 Broadway, 28th Floor, New York, New York.

8. Defendant Colony is a business corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business located at 8720 Stony Point

Parkway, Suite 300, Richmond, Virginia. Accordingly, there exists complete diversity of citizenship between the parties.

Amount in Controversy

9. The Complaint in the Underlying Action alleges that the plaintiff in the Underlying Action was injured while performing work at the premises located at 221 West 137th Street, New York, New York. Here, plaintiff USM seeks reimbursement for fees and expenses and contractual liability to the underlying plaintiff for disability and lameness associated with a ligament tear and cervical injections.

10. The matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

TIMELINESS OF REMOVAL

11. This Notice of Removal is timely in accordance with 28 U.S.C. § 1446(b)(1), because it is filed within thirty (30) days of Colony's receipt of the Summons and Complaint.

12. This Notice of Removal is also timely in accordance with 28 U.S.C. § 1446(c), because it is filed less than one year after commencement of the action.

VENUE

13. Venue of this removal is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division embracing the place where the action is pending.

PAPERS FROM REMOVED ACTION

14. As required by 28 U.S.C. § 1446(a), all process, pleadings, and orders served on or by Colony in the action are attached to this Notice of Removal as Exhibit "A."

NOTICE OF FILING NOTICE OF REMOVAL

15. As required by 28 U.S.C. § 1446(d) and to effect removal, Colony is filing a copy of this Notice of Removal with the Clerk of the Supreme Court of New York, New York County, attached as Exhibit “B.”

WHEREFORE, defendant Colony Insurance Company respectfully removes this action from the Supreme Court of New York to this Court for all future proceedings and trial.

Dated: February 7, 2020

Respectfully submitted,

STEWART SMITH

By: /s/ William F. Stewart
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*Attorneys for Defendant,
Colony Insurance Company*

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*Attorneys for Plaintiffs,
USM Asset Trust Series-7*

CERTIFICATE OF SERVICE

I hereby certify that on **February 7, 2020**, the foregoing **Notice of Removal** was filed with the Clerk of the Court for the United States District Court for the Southern District of New York and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

William D. Deveau, Esq.
Connell Foley LLP
888 Seventh Ave., 9th Floor
New York, NY 10106
P: (201) 521-1000

***Attorneys for Plaintiffs,
USM Asset Trust Series-7***

By: /s/ William F. Stewart
William F. Stewart, Esq.